IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 11450 of 2004

Between:

A.Anitha, D/o A.Soma Mallaiah,
R/o H.No.6-40/1, Palakurthy Village and Mandal,
via Ippaguda, Warangal District

..... PETITIONER

AND

1 M/s Indian Oil Corporation, represented by
Senior Divisional Retail Sales Manager, Divisional Office,
D.No.3-6-436 to 438, Naspur House, Himayathnagar, Hyderabad
2 Karemola (Bellapu) Sridevi, D/o Late B.P.Arun Kumar,
R/o Srinivasa Filling Station, Near REC (National) Institute of Technology,
Kazipet, Warangal District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the action of the respondents in accepting the application of the respondent No.2 for allotment of retail outlet dealership of petrol pump at Palakurthy village and Mandal, Warangal District by ignoring or rejecting the application of the Writ Petitioner as arbitrary, illegal affecting the right to life and property of the petitioner by Writ of Mandamus and consequently cancel all further action of Respondent No.1 awarding dealership at Palakurthy of Warangal District to Respondent No.2 with a direction to conduct proper enquiry of particulars of the application and exercise the discretion of allotment of petrol pumps in a fair manner.

Counsel for the Petitioner: MR.BANKATLAL MANDHANI

Counsel for the Respondent No.1 : Mr. P.V.Sanjay Kumar

Counsel for the Respondent No.2: Mr. M.Babu Rao.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 11450 of 2004

O R D E R :

The petitioner herein, who is a prospective applicant, filed this Writ Petition, inter alia, seeking for a writ of Mandamus declaring the action of the first respondent in allotting retail outlet dealership of petrol pump at Palakurthy village and mandal, Warangal district, to the second respondent as illegal and further to cancel the same.

The case of the petitioner, in brief, is that in pursuance of the advertisement issued on 19.12.2003 calling for applications for allotment of Indian Oil Corporation petrol pump retail outlet dealership under various categories and at different regions in the State of Andhra Pradesh, the petitioner applied for the same through application no. APSO: SC/1373 to the first respondent. The petitioner claims that she belongs to Scheduled caste community and in support, she filed a certificate issued by the concerned Mandal Revenue Officer. The petitioner further states that she appeared for M.Sc. final year examinations during the year 2003-2004 and she has shown two sites in the application by furnishing relevant title deeds, which show that one of them belongs to her mother Pushpalatha and another jointly owned by her father and his friend G.Chandraiah. Along with the said application, she also filed lease deeds to be executed by her mother or father and Sri G.Chandraiah, in case of the allotment of the same. Accordingly, the first respondent issued a call letter dated 13.05.2004 for appearance of an interview on 17.06.2004, which the petitioner attended at 2.00 PM along with all the documents. There were in all 13 applicants, of which 7 attended the interview including the petitioner and the second

respondent, who is a non-local and in spite of the fact that she is not eligible for allotment. The main ground urged in this Writ Petition is that subsequent to the said interview, the first respondent selected the second respondent in spite of her such disqualification. Further, it is stated that close relatives of second respondent viz. her mother B.Sugunakumari and her brother B.A.Mohan jointly own a dealership of Indian Oil Corporation, which is being run under the name and style M/s. Srinivas Filling Station, situated at Regional Engineering College (NIT), Kazipet, Warangal district. Therefore, the second respondent could not have been selected. It is submitted that since the said close relatives are no other than her mother and her brother, they consequently fall well within the prohibited degrees for consideration for allotment. Hence, the entire action on the part of the first respondent is totally illegal. It is further submitted that the second respondent does not own any property, which was proposed to be let out to the first respondent. Further, it was pointed out that in the land which has been shown by the second respondent in survey no. 372/B of Palakurthy gram sivar, a Government Residential Bridge School is being run and the said land is owned by one V.Lokamma, w/o. Yellaiah, belonging to backward caste, and her husband is the Mandal Parishad President of Palakurthy. That apart, the said land shown by the second respondent is also not practically feasible since it is located at a far distance of 1 KM from chowrastha, whereas the proposed sites suggested by the petitioner are hardly at a distance of 300 & 500 meters from chowrastha. It was further pointed out that the petitioner's attempt for allotment made in pursuance of earlier notification dated 02.10.2002 by the first respondent, did not yield any result. Hence, a fresh application is being made in pursuance of present notification dated 19.12.2003. In the aforesaid circumstances, it is stated that selection of the second respondent by the first respondent is against the norms and guidelines prescribed by themselves. Hence, this Writ Petition.

Contesting the claim of the petitioner, in the counter affidavit filed by the first respondent, which is sworn to by Senior Manager (R.S.) of

the Corporation, it is stated that there is no illegality in the process of evaluation, consideration of all the applications and ultimate selection. As per the norms and guidelines, any indian national can apply, and the allegation that the second respondent is not eligible for allotment of dealership as she is distantly related to dealer of existing retail outlet M/s. Srinivasa Filling Station, is not correct. It was further stated that as per the guidelines, 'close relative' means husband or wife or unmarried sons or daughters only. In regard to other allegations, it is stated that on verification, the first respondent found the proposal made by the second respondent more feasible. Hence, she was rightly placed at no.1 in the merit panel consequent to the interview by duly constituted selection committee. Therefore, it is submitted that there are no merits in the Writ Petition and the same is liable to be dismissed.

In the counter affidavit filed by the contesting second respondent, it is stated that the petitioner had earlier made unsuccessful attempt and now once again, having failed in securing the allotment by satisfying all the requirements, she can not challenge the selection of second respondent. It was submitted that it is only after scrutinising her application, she was asked to appear for interview and the selection is purely as per the guidelines. Denying all the other allegations, it was submitted that the infrastructure as pointed out by her is perfectly to the satisfaction of the first respondent and therefore, she was rightly placed top in the selection panel and was declared selected as dealer. In regard to the main allegation as to the bar of close relatives, it is stated that the close relative would include only husband or wife or unmarried son or daughter of the applicant, and therefore, neither of the said persons who are running M/s. Srinivasa Filling Station, comes within the prohibited degrees of relationship. It was further stated that she is the married daughter of Bellapu Suguna Kumari and she was married to Karemola Anand Kumar of Hyderabad on 08.08.2003. Therefore, she is not a dependent unmarried daughter of said Bellapu Suguna Kumari. In view of the same, bar of close relative of applicant, would not stand in her way for allotment of

dealership. Therefore, there are no merits in the Writ Petition and the same is liable to be dismissed.

On an appraisal of various submissions made from the counsel appearing for the petitioner and the respondents 1 and 2 separately, the question which falls for consideration in this case is as to whether on the facts and circumstances, the application of the second respondent falls well within the prohibited degrees of relationship for consideration of allotment of dealership by the first respondent-corporation ?

There is no dispute in regard to the chequered events leading from the date of issuance of notification by the first respondent calling for applications for such allotment. The petitioner as well as the second respondent along with other applicants, submitted their respective due formats as contemplated under the notification. At this juncture, it is not necessary to go into various other aspects, though alleged from both the sides, in regard to the feasibility of the sites shown by the petitioner as well as the second respondent since this case revolves around only as to the disqualification, if any, of the second respondent for such consideration. The principal bone of contention directed against the selection of the second respondent is that her own mother B.Suguna Kumari and her brother B.A.Mohan, jointly own a dealership of the same corporation and the business is being run in the name and style M/s. Srinivasa Filling Station, which is situated at Regional Engineering College (NIT), Kazipet, Warangal district. There is no denial in regard to their relationship with second respondent nor is there any challenge in any other manner. Further, there is also no denial to the fact of owning of dealership of the first respondent-corporation by the said Suguna Kumari and Mohan, mother and brother respectively of the second respondent, and running the said business by them. According to both the respondents, as sworn to in their respective counter affidavits, close relatives for the purpose of disqualification or prohibition to hold any such dealership, mean, a) husband or wife of the applicant; b)

unmarried sons of the applicant; c) unmarried daughters of the applicant, and since the second respondent is a married woman, the said mother and brother of the second respondent are no way found in the said arena of close relative.

In this connection, it is relevant to note that considering similar such question, in *Centre for Public Interest Litigation V. Union of India & others*, the Apex Court laid down certain principles therefor, and held that general conditions applicable for such allotment contemplate that he/she or any of his/her following close relatives (including step relatives) should not already hold a dealership of petroleum products of any oil company : (i)spouse; (ii) father/mother; (iii)brother; (iv)son/daughter-in-law. As per the above, it is quite clear that parents and brother consequently fall well within the prohibited relationship. It was contemplated in the decision that to ensure the exercise of discretion in making such allotments in conformity with the rule of law by excluding the likelihood of arbitrariness and minimising the area of discretion by regulating its exercise in accordance with settled norms and guidelines, it is indicated that these norms would govern all future allotments. Such norms and guidelines include the aforesaid general condition barring consideration of any application of such of those close relatives which include spouse, parents, brother, son and daughter-in-law. Subsequent to this, neither of the respondents herein pointed out any varying decision or factor in making any modification in regard to the aforesaid norms. In this case, admittedly, the second respondent comes well within the aforesaid barred area since her mother and her brother are already running another outlet under the name and style M/s. Srinivasa Filling Station situated at Regional Engineering College (NIT), Kazipet, Warangal district. In view of the same, it is to be held that the very consideration of application of the second respondent and making allotment in her favour, are squarely in the teeth of the guidelines as laid down by the Apex Court. In the circumstances, it is to be held that the second respondent is totally disqualified from seeking any such allotment.

The Writ Petition is, accordingly, allowed and the impugned action of the first respondent in allotting dealership to the second respondent is set aside. No costs.

(B.Prakash Rao, J.)

17.01.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on

Monday, the Seventeenth day of January Two thousand and four.

… Registrar

Copy to:

1 The Senior Divisional Retail Sales Manater, M/s Indian Oil Corporation, Divisional Office, D.No.3-6-436 to 438, Naspur House, Himayathnagar, Hyderabad

2 Two CD copies.